IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06/04/2006

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THE HON'BLE MR. JUSTICE P. SATHASIVAM
AND
THE HON'BLE MR. JUSTICE J.A.K. SAMPATHKUMAR

Review Application No.5 of 2006

M. Adaikkan .. Petitioner

-vs-

1. The Registrar of
Cooperative Societies
N.V.N. Maaligai
No.170 EVR Periyar Road
Kilpauk, Chennai 600 010.

2. The Joint Registrar of Cooperative
Societies, Ramakrishna Road
Salem 7.

3. The Registrar
Tamil Nadu Administrative Tribunal
City Civil Court Buildings
Chennai. .. Respondents

Review Petition filed under Article 226 of the Constitution of India read with Section 151 CPC against the order dated 06.12.2005 made in W.P.No.19840 of 2003.

!For petitioner : Ms. R. Vaigai

^For respondents: Mr. D. Krishnakumar
Spl. Govt., Pleader for R.1&2
..

:ORDER
(Judgment of the Court was delivered by P. SATHASIVAM,J.)

Aggrieved by the dismissal order dated 06.12.2005 made in Writ Petition No.19840 of 2003, M. Adaikkan, the petitioner in the above writ petition has filed the present review petition.

2. The review applicant, while functioning as Senior

Inspector of Cooperative Societies, during 1995, was directed to hold additional charge of about 15 Societies as Special Officer. During the said period as Special Officer, a settlement h ived at by him under Section 12 (3) of the Industrial Disputes Act, 1947 (in short "I.D.Act"), and for alleged violations of the Rules, a charge memo dated 31.03.1998 under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules (in sho rt "the Rules") was issued, asking him to submit his explanation for the same. An Enquiry Officer was also appointed and at the time of enquiry, on 13.07.2002, he submitted his written explanation and the Enquiry Officer submitted his report. Based on the same, the Joint Registrar of Cooperative Societies, Salem Region has concluded that out of 55 allegations, 45 were proved and 9 were not proved, by order dated 31.01.2002, dismissed the petitioner from service. Aggrieved by the said order, the petit ioner has filed O.A.No.807 of 2002 before the Tamil Nadu Administrative Tribunal. By order dated 21.02.2003, the Tribunal, dismissed his original application and confirmed the

punishment of dismissal order of the Joint Registrar of Co.operative Societie s, Salem Region. The said order was challenged before this Court in W.P.No.19840 of 2003.

3. In the said writ petition it was contended that the respondents have no jurisdiction to initiate proceedings under Rule 17(b) of the Rules; the petitioner was not given reasonable opportunity to put forth his case before the Original auth ll as the Tribunal, since the higher authority, viz., the Joint Registrar of Cooperative Societies had imposed the capital punishment, the petitioner lost an opportunity of canvassing the order before the appellate authority; in respect of similarly plac ed persons, the same Department has imposed minor punishment, and in some cases, charges have been dropped. Considering all the above contentions, the reasoning of the Tribunal, volumness charges leveled against the petitioner, the enquiry proceedings, order of the Joint Registrar of Co.operative Societies, dismissing the petitioner from service and finding that the petitioner acted in a high handed manner as well as caused loss to the tune of Rs.7.5 lakhs to various authorities while he was the Speci al Officer, the punishment of dismissal imposed on him is just, reasonable and adequate to the proved charges, the learned Judge dismissed the said writ petition.

4. By pointing out that as per G.O.(2D) No.68 dated 12.11.1993 and G.O.(2D) No.2 dated 06.01.1994, the Government sanctioned revised cadre strength as well as pay scales and authorised signing of settlements under Section 12(3) of the I.D. contended that the conclusion of the Joint Registrar, the Tribunal, as well as the order passed in the writ petition cannot be sustained. It is also brought to our notice that the order passed in the case of C. Ramanathan, Co.operative Sub Registrar, wh o was also charged for a similar misconduct of granting unauthorised revision of pay scales, appointments, promotions, etc., after accepting his explanation, relying on the aforesaid two Governments Orders, an order had been passed on 13.09.1999, absolvi ng him of all the charges. If the said Government Orders are applied to the case of the petitioner, the charges leveled against him are also liable to be absolved.

5. On going through the said Government Orders, we ordered notice in the review application. The Joint Registrar of Cooperative Societies, Salem Region, second respondent herein filed a counter affidavit. Though he dealt with all the factu there is no need to refer the same, except his stand relating to two Government Orders referred to in the review petition. Regarding those two orders, it is stated that the main issue involved in the disciplinary proceedings initiated against the petit ioner is that among other issues, the petitioner has entered into the settlements under the provisions of the I.D. Act, even for those whose appointments are not regular, besides making irregular appointments. This Court in many cases held the settleme nts entered into under the provisions of the I.D. Act either by fraud, by coercion or against the instructions of the Registrar do not have any legal status.

6. The contention relating to one C. Ramangathan, Cooperative Sub-Registrar (now retired), it is stated that subsequent domestic enquiry revealed that the charges leveled against him have not been proved as per the material records and the trar dropped the charges as per his proceedings dated 30.09.1999. The said case cannot be cited, since the petitioner herein, almost in all the Societies where he worked as Special Officer, crossed the boundaries by violating the bye-laws and rules ther eof.

7. Ms. Vaigai, learned counsel for the petitioner reiterated the very same grounds as stated in the review application, viz., two Government Orders, i.e., G.O.(2D) No.68 dated 12.11.1993 and G.O.(2D) No.2 dated 06.01.1994, the Government san ised cadre strength as well as pay scales and also authorised signing settlement under Section 12 (3) of the I.D. Act. She also contended that in the case of similarly placed person, viz., C. Ramanathan, Cooperative Sub-Registrar, by accepting the expla nation of him, wherein he cited the aforesaid Government Orders, the Joint Registrar, absolved him of all the charges, the same as that of the petitioner's case.

8. Mr. D. Krishnakumar, learned Special Government Pleader, reiterated the objections as stated in the counter affidavit.

9. Now, let us consider whether the petitioner has made out a case for reviewing the earlier order passed by this Court. In G.O.(2D) No.68 Co.operation, Food and Consumer Protection Department, dated 12.11.1993, the Registrar of Co.operative directed the Management of Primary Agricultural Cooperative Banks immediately to enter into 12 (3) settlements for five years under the I.D. Act, 1947 in lieu of the existing 12 (3) settlement. Certain scales have been modified in G.O.(2D) No.2 Cooperat ion, Food and Consumer Protection Department dated 06.01.1994. It is true that both the said Government Orders enable the Management of Primary Agricultural Cooperative Banks to enter into a new settlement under Section 12(3) of the I.D.Act in lieu of the existing settlement. However, merely because there is an authorisation by the Government for modification of the existing scale of pay, payments, etc., even then decisions have to be taken and orders passed only in accordance with law and there cann ot be any fraud or violation.

10. The proceedings of the Joint Registrar of Cooperative

Societies, Salem dated 31.01.2002 which starts from page 109 and ending with 246 of the typed set of papers filed in the review application demonstrate the details regarding allegatio ls relating to the same, discussion and finding of the Joint Registrar. It also shows that the Joint Registrar was very well aware of the two Government Orders authorising the persons in charge of the Management of the Primary Agricultural Cooperative B anks for revising payments, appointments, promotions, etc. Further, we have already concluded that adequate opportunity was given to the petitioner before the Enquiry Officer as well as the Original Authority, viz., Joint Registrar. After analysing all the materials, the Joint Registrar came to the conclusion that out of 55 allegations, 46 were proved and 9 were not proved. A perusal of the said order also shows that the decision is based on the records, explanation of the applicant, report of the do mestic Enquiry Officer and further representation of the petitioner. We are satisfied that the Joint Registrar was aware of the relevant Government orders and based on the acceptable materials concluded that out of 55 allegations, 46 were proved. In su ch circumstances, we are unable to accept the first contention. This Court in several writ petitions has held that settlements entered into under the provisions of I.D. Act whether by fraud or by coercion or against the instructions of the Registrar do not have a legal status.

11. Coming to the case of C. Ramanathan, Cooperative Sub-Registrar, in the counter affidavit, the Joint Registrar of Co.operative Societies, Salem Region has explained that subsequent domestic enquiry revealed that the charges leveled agains not been proved, as per the material records and hence the charges have been dropped as per the proceedings dated 30.09.1999. It is also stated that the second respondent has duly applied his mind in disposing of the charges framed against C. Ramanatha n and dropped the disciplinary proceedings. On the other hand, it is stated that in almost all the Societies, in which the petitioner was a Special Officer, he has violated the bye-laws and Rules. In the light of such factual details, the said contenti on is also liable to be rejected.

Under these circumstances, we do not find any valid ground for reviewing the order dated 06.12.2005 made in W.P.No.19840 of 2003; consequently, the review petition is dismissed. No costs.

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To
1. The Registrar of Co.operative Societies
N.V.N. Maaligai
No.170 EVR Periyar Road
Kilpauk, Chennai 600 010.

2. The Joint Registrar of Co.operative Societies, Ramakrishna Road
Salem 7.